

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express, Priority Mail
First-Class Package Service & Parcel Select
Priority Mail Express, Priority Mail,
First-Class Package Service & Parcel Select
Contract 108

Docket No. MC2023-126

Competitive Product Prices
Priority Mail Express, Priority Mail,
First-Class Package Service & Parcel Select
Contract 108 (MC2023-126)
Negotiated Service Agreement

Docket No. CP2023-129

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL EXPRESS, PRIORITY MAIL,
FIRST-CLASS PACKAGE SERVICE, & PARCEL SELECT
CONTRACT 108 TO THE COMPETITIVE PRODUCT LIST

(April 5, 2023)

The Public Representative hereby provides comments pursuant to the Commission notice initiating this docket.¹ In that notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 108 (Contract) to the competitive product list.²

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 29, 2023.

² USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 108 to Competitive Product List and Notice of Filing Materials Under Seal, March 28, 2023. (Request)

The Postal Service's Request includes a public (redacted) version of the Governor's Decision, a public (redacted) version of the Contract, proposed changes to the Mail Classification Schedule product list, a statement of supporting justification, and a certification of compliance with 39 U.S.C. § 3633(a). The Postal Service also filed under seal the unredacted version of the Governor's Decision and the Contract and supporting financial data estimating the Contract value during the first year.

According to the Postal Service, the Contract is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service maintains that the prices and classification underlying the Contract are supported by Governors' Decision No. 19-1.³

The Contract's effective date will be set 3 business days after receiving final regulatory approval by the Commission. Attachment B at 9. The Contract will expire on three years from the effective date, unless (1) terminated by either party with 30 days' notice to the other Party in writing, (2) termination for convenience or breach, (3) renewed by mutual agreement in writing, (4) superseded by a subsequent contract between the Parties, (5) ordered by the Commission or a court, or (6) required to comply with subsequently enacted legislation. *Id* at 10.

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that the contract should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the contract will generate sufficient revenues to cover costs during its term and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

³ Decision of the Governors of the United States Postal Service on the Establishment Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, February 7, 2019 (Governors' Decision No. 19-1).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that the Contract be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Attachment D. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add the Contract to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices for Contract 108 should generate sufficient revenues to cover costs during the term of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

The Contract is expected to remain in effect for a period of 3 years. During this 3 year period, the Contract contains a mechanism for annual upward adjustment of prices. Finally, the Postal Service must file revenue and cost data for the Contract for review in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for the Contract for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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